IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13450 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULEMAN VALIBHAI PARMAR - Petitioner(s)
Versus
STATE OF GUJARAT THR' TRANSPORT COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR AA QURESHI for Petitioner

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/07/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing this petition under Articles 226 and 227 of the Constitution, the petitioner has prayed to set aside the order dated June 14, 2005, passed by the Regional Transport Officer, Rajkot, calling upon the petitioner to pay motor vehicle tax of Rs.19,694/- with penalty of Rs.5,590/- and interest at the rate of two per cent per month within thirty days from the date of the order. The petitioner has also prayed to set aside the order dated May 10, 2006, rendered by the Commissioner of Transport, Gujarat State,Gandhinagar, in Tax Appeal No.60 of 2005 by which order dated June 14, 2005 passed by the RTO, Rajkot, is upheld.

2. The petitioner is the owner of Truck bearing Registration No.GJ-3-T-3297. The petitioner's

truck, driven by him, caught fire on December 19, 2002. It is the case of the petitioner that the truck was destroyed in the said accident. The motor vehicle tax was paid by the petitioner upto November 30, 2002. According to the petitioner, the vehicle in question, having been burnt completely, was not in use since December 30, 2002, and that he suffered a loss of Rs.2,00,000/-. On August 12, 2004, the petitioner applied to cancel the registration and showed willingness to pay tax from December 1, 2002 to December 31, 2002, as tax upto November 30, 2002, was paid. However, by an order dated June 14, 2005, the RTO, Rajkot, held that the petitioner was liable to pay tax of Rs.19,694/- with penalty of Rs.5,590/- and interest at the rate of two per cent per month as application in NT Form was not made within the time stipulated by the Rules. The order passed by the RTO, Rajkot, is produced by the petitioner at Annexure-E to the petition. Feeling aggrieved by the said

order, the petitioner filed Tax Appeal No.60 of 2005 before the Commissioner of Transport, Gujarat State, Gandhinagar. The appellate authority, after considering the facts of the case, has dismissed the appeal by order dated May 10, 2006, which is produced at Annexure-F to the petition. The case of the petitioner is that after the vehicle was destroyed in the accident, which had taken place on December 19, 2002, it was not put to use and therefore, the RTO, Rajkot, was not justified in levying the tax. According to the petitioner, the respondents did not consider the principles for exemption of payment of tax under Rule 13 of the Bombay Motor Vehicle Tax Rules, 1959, and therefore, the impugned orders are liable to be set aside. What is stressed by the petitioner is that the orders passed by the respondents are against the principle laid down by the Supreme Court in decision dated May 9, 2000, rendered in the case of State of Gujarat and others v. Kaushikbhai K.Patel and another, in Civil

Appeal No.198 of 1999, and therefore, the same should be set aside. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

3. This Court has heard Mr.A.A.Qureshi, learned counsel for the petitioner at length and in great detail. The plea that as the vehicle in question was not used on road after it was destroyed in accident which took place on December 19, 2002, the RTO, Rajkot, was not entitled to levy the tax, has no substance. It is well settled that the phrase “use of motor vehicle” has wider connotation. Use of vehicle does not cease on account of vehicle being rendered immobile on account of breakdown or mechanical defect or accident. What is material and relevant is use of road by vehicles for levy of tax under the Act. The reason for non use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory. In order to earn

exemption, it was incumbent upon the petitioner to make necessary declaration before the competent authority in the prescribed forms within the prescribed time limit. It is an admitted position that the petitioner never intimated to the competent authority in the stipulated form within the prescribed time limit that the vehicle in question was not being used on road. Under the circumstances, this Court is of the opinion that the RTO, Rajkot, was justified in levying the tax on the vehicle on the footing that it was in use.

4. The contention that in view of the judgment delivered by the Supreme Court in Civil Appeal No.198 of 1999 decided on May 9, 2000, the petitioner is entitled to the relief claimed in the petition has also no substance. In the said case, the respondents had filed Special Civil Application in the High Court for setting aside the notice dated March 29, 1996, demanding payment of

composite tax and penalty and for declaration that Section 3-A(5) of the Bombay Motor Vehicles Tax Act, 1958, as amended by the Bombay Motor Vehicles Tax (Gujarat amendment) Act, 1992, was ultra-vires. The respondent No.1, who was the owner of an omnibus, had intimated the non-user to the Motor Vehicle Inspector and claimed refund of the tax for the relevant period, but the claim for refund was not allowed on the ground that the omnibus had been kept in non-use for a period exceeding three months and the respondent No.1 had failed to satisfy that such non-use was for the reasons beyond his control. The High Court had allowed the petition whereupon the State Government had approached the Supreme Court. From the facts of the said case, it is evident that the respondent No.1 had filled Form NT declaring non-use of the vehicle in question for the period from July 1, 1995 to March 31, 1996, and that the said report was accepted and refund of tax was ordered. However, for the remaining period,

refund was not granted as the Director of Transport was not satisfied of the non-user of the vehicle for reasons beyond control of the respondents. After referring to the provisions of law, the Supreme Court refused to interfere with the judgment and order passed by the High Court. This Court is of the opinion that the principle laid down in the said decision cannot be made applicable to the facts of the present case inasmuch as the petitioner did not file Form NT declaring non-use of the vehicle belonging to him within the time limit prescribed. Therefore, on the basis of decision rendered by the Supreme Court in Civil Appeal No.198 of 1999 decided on May 9, 2000, the petitioner is not entitled to the relief claimed in the petition.

5. The appellate order makes it very clear that in view of the provisions of Section 3(2) of the Bombay Motor Vehicles Tax Act, 1958, the petitioner was liable to pay tax with

reference to the vehicle which was owned by him. Section 55(1) of the Motor Vehicles Act, 1988, makes provision for cancellation of the registration of a vehicle. Sub-section 1 of Section 55 inter-alia provides that if a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner has to, within 14 days report the fact to the registering authority and forward the certificate of registration to that authority. Admittedly, in this case, no report was made by the petitioner, to the registering authority within 14 days from the date of the accident. The report for the first time was made on August 12, 2004, after a period of 1 year and 8 months from the date of the accident. Under the circumstances, there is no manner of doubt that the petitioner is liable to pay tax upto August 31, 2004. The plea that the petitioner was ignorant and therefore did not file prescribed form within the time limit stipulated by the Statute and therefore the

order for recovery of tax should not have been issued to him is rightly rejected by the appellate authority holding that ignorance of law is no good excuse. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the learned counsel for the petitioner to interfere with the two orders which are impugned in the petition and the petition, which lacks merits, deserves to be dismissed.

6. For the foregoing reasons, the petition fails and is dismissed.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)